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The Examiner bears the burden of establishing a *prima facie* case of obviousness based upon the prior art. *In re Fritch*, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992) and *In re Deuel*, 34 USPQ 2d 1210, 1214 (Fed. Cir. 1995). When the references cited by the Examiner fail to establish a *prima facie* case of obviousness, the rejection is improper. *In re Deuel*, 34 U.S.P.Q.2d at 1214.

To establish a *prima facie* case of obviousness by combining references, all claim limitations must be taught or suggested by the prior art, and all words in a claim must be considered. M.P.E.P. § 2143.03 (8<sup>th</sup> Ed. 2001). Furthermore, there must be some suggestion or motivation in either the references or in the knowledge generally available to one of ordinary skill in the art to modify a reference or combine teachings of the references. M.P.E.P. §2143.01. Prior art references must be read as a whole, including where the references diverge and teach away from the claimed invention. *Akzo N.V. v. United States International Trade Commission*, 1 U.S.P.Q.2d 1241, 1246 (Fed. Cir. 1986). If a proposed modification or combination of prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. M.P.E.P. §2143.01.

2. The combination of Yotsutani *et al* and Gough does not meet each limitation of the claims.

The "switching matrix 20" of Yotsutani *et al*. is not, as the Examiner contends, a "routing device" and that its "zones" are not "networks." As explained below, the switching matrix of Yotsutani *et al*. do not and cannot route packets of data or messages (assuming for the sake of argument that Gough's broadcast "messages" are packets) in Gough's mobile communication network. Yotsutani *et al*. are simply forming a circuit by connecting a telephone call on an extension line to one of several radio transceiver base stations, one in each "zone." Furthermore,

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Gough simply broadcasts a message throughout its network. Therefore, neither Gough nor Yotsutani *et al.* route a packet based on a logical address contained in the packet. Because each claim in the present application requires a node that routes data packets based on an address contained in the packet, the combination of Yotsutani *et al.* and Gough fails each and every element of the claims.

Turning to a detailed consideration of Yotsutani *et al.*, its communication control system, of which control unit 16 and switching matrix 20 are a part, "is for use in a mobile radio telephone network." Col. 2, line 27 (emphasis supplied). In other words, the communication control system is for a conventional, circuit switched network. A basic function of control unit 20 is to connect a telephone extension line from a PBX (private branch exchange) to a radiotelephone unit assigned to that extension line in response to a call arriving on that extension line. To do this, it must connect the extension line to a particular radio transmitter/receiver, or as it is termed by Yotsutani *et al.*, radio communication device 15 (not to be confused with radiotelephone 11).

It makes this connection in the following manner. An "arriving signal" arrives on one of the extension lines 10. In response to the "arriving signal," control unit 16 sends an "incoming call signal" to the one of a plurality of radiotelephone sets 11 that this extension line is assigned to. See Col. 4, lines 41-46. As explained in more detail in column 4, lines 49-69 and column 5, lines 1-33, an incoming call signal includes a call tone signal, which is generated by tone trunk 23, and a number signal representative of the specific telephone set, which is generated by CPU 25 based on which extension line the arriving signal arrives on. The decision of which interface 22 (and thus what radio communication device 15) to connect the extension line to is based on information stored by the controller, namely, the assignment of radio telephones to extension

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lines and the current location of the radio telephone assigned to the extension line on which the call is arriving. The incoming call signal is sent to radio telephone 11 in response to the arriving signal. The "arriving signal" and the "incoming call signal" are not the same, as the Examiner seems to imply.

There is plainly no packet being routed — only signals being generated in response to receiving of signals followed by a circuit being formed by a switch. Furthermore, the connection is made without use of any signaling information contained in the "arriving signal." Thus, there is no indication of routing taking place on a logical code contained in a packet, as required by the claims.

Gough on the other hand is a simple broadcast network, where all mobile units shares one or two frequencies to send both voice and data. See col. 1, lines 10-13, 23-28 and 31-35 ("Briefly, the invention comprises ... means for transmitting and receiving both voice signals and said digital codes over said transceiver.") It is a single transmitter system sending and receiving from a single fixed antenna location packets containing only media level addresses for mobile receiver/transmitters in a single coverage area. Gough does not contemplate routing of messages, as the Examiner admits. ("Gough does not disclose at least one handling nodes [sic] for routing data packets to the mobile receiver based on destination codes.....")

Placing Yotsutani *et al.*'s switching matrix in Gough's network does not enable Gough's network to route messages. Independent claims 19, 24, 27, 32, 35, and 38 each requires routing based on a code that identifies either a mobile data packet source (claims 24, 32, 35), receiver (claims 19, 27) or host (38). Furthermore, independent claims 24, 32 and 35 each state that a logical code contained in data packets from a mobile source is stored. Thus, for at least these reasons, the combination fails to meet each and every limitation of the claims.

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The rejection is in error and must be withdrawn.

3. The stated motivation for combining references is not found in the prior art and it cannot in fact supply the necessary suggestion or motivation to make the combination.

The Examiner explains that the motivation for using a "switching matrix 20" of Yotsutani *et al.* in a "mobile communications network of Gough in order to route information messages between different networks" would be to "enhance wireless communications for mobile users traveling in different remote areas by routing information messages through routers in different networks."

However, no cite for where in the prior art this motivation is found is provided. Indeed, rather than being concerned with increasing capacity of a network or joining together multiple networks, Gough's focus appears to be on reducing the loading of a limited number of frequency channels in a simple broadcast network by using digital messages in place of routine voice communications. Yotsutani *et al.* switches only telephone calls, not packets. Therefore, neither teach nor suggest routing of information messages.

The Examiner also fails to explain how a circuit switch would be used to route information messages in Gough's network. As previously explained, Yotsutani *et al.* and Gough are two entirely different types of networks. Using such a switch would require a fundamental change in the principles of operation of Gough's network or of Yotsutani *et al.*'s switch and network. If a proposed modification or combination of prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. M.P.E.P. §2143:01.

Therefore, the motivation provided by the Examiner is legally insufficient to combine these two references and must, for at least this reason, be withdrawn.



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4. Other grounds for error

Given the clear error in the rejection of the independent claims and the misreading of the references, applicant has chosen not to address specifically the Examiner's remaining comments, including his comments regarding the dependent claims. However, by not specifically responding applicant is not acquiescing in or admitting the accuracy of these statements or the rejection of these dependent claims. Applicant reserves the right to address all errors in the rejection at a later time, including on appeal.

5. Conclusion

For the forgoing reasons, it is submitted that the rejection of all pending claims is in error and that the rejection should therefore be withdrawn. Allowance of the application is respectfully requested.

The Commissioner is hereby authorized to charge any fees or credit any overpayment associated with this Amendment to Deposit Account No. 13-4900 of Munsch Hardt Kopf & Harr, P.C.

Respectfully submitted,

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